NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	Disciplinary Proceeding No. C8A000059
	:	Hearing Officer - JN
v.	:	
ROGER A. HANSON (CRD #236512),	:	**HEARING PANEL DECISION**
Milwaukee, WI	:	July 19, 2001
Respondent.	:	

Registered representative acknowledged his liability for participating in private securities transactions for compensation, without prior written notice to and permission from his firm, in violation of Rules 2110 and 3040. He was suspended for 90 days, ordered to re-pay customers by pro rata disgorgement of the relevant commissions, and fined $5,000.

Appearances

For the Complainant: Dale A. Glanzman and Rory C. Flynn.

For the Respondent: Roger A. Hanson appeared pro se.

DECISION

I. Introduction

The Department of Enforcement's Complaint, filed on October 12, 2000, alleged that Respondent Hanson, a registered representative associated with a member firm, violated Rules 2110 and 3040 by participating in private securities transactions for compensation, without prior written notice to and permission from his firm. He admitted liability, as charged in the Complaint, and agreed

that the hearing should be limited to the question of sanctions.[1] A Hearing Panel composed of two current members of the Association's District 8 Committee and the Hearing Officer conducted a hearing on April 30, 2001 in Milwaukee, Wisconsin. Enforcement introduced eight exhibits. The Respondent testified and introduced one exhibit.

II. Discussion

A. Background

In 1996 and 1997, Hanson was registered as a General Securities Representative of Liss Financial Services, a member firm (CX-2).[2] Between November of 1996 and February of 1997, he sold limited partnership units (organized to market cellular telephone service) to fifteen customers who invested a total of $220,500 (CX-1). These sales netted him $22,050 in commissions (Tr. 9).[3] Respondent, who had nearly thirty years of experience and no disciplinary history, also invested $30,000 in these units (Tr. 17).

Respondent admitted that he never informed his firm at any time or in any way about this activity, stating that he did not do so because he believed that the units were not securities (Tr. 13, 20).[4] The investors ultimately lost most of their money, when a reorganization left them with unmarketable stock and a payment of approximately $300 for each $10,000 invested; Hanson acknowledged that "right now, there isn't really a market of any appreciable amount for what they've invested up to this time" (Tr. 16).

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[1] See "Stipulations of Fact and Law and Joint Motion to Limit Hearing to Issue of Sanctions," filed February 14, 2001.

[2] "CX" refers to Enforcement's exhibits.

[3] "Tr." refers to the transcript of the April 30, 2001 hearing.

[4] He did not mention (and was not asked about) Rule 3030's requirement for notice of outside business activities.

B. Sanctions

The NASD Sanction Guidelines (2001) recommend a suspension of ten business days to one year and a fine of $5,000 to $50,000; in egregious cases, the Guidelines recommend a bar or suspension of up to two years (at p. 19). The Department here seeks a bar, or (short of that sanction) a two-year suspension, arguing that the instant case is egregious because of the number of customers and the length of time involved in the misconduct (Tr. 8-9). Enforcement also urges that Hanson be ordered to disgorge his commissions to the customers and fined $5,000 (Tr. 8, 38). Respondent urged that he should receive no sanction at all, arguing that he had reason to believe that the units were not securities, that his own losses on the units show that the violations were unintentional, that he had no disciplinary history, and that one of the losing investors was sophisticated (RX-1; Tr. 44-45).

The Panel rejects the notion that Respondent should not be sanctioned. His misconduct is serious. As the National Adjudicatory Council recently stated, "Rule 3040 serves an important function of protecting investors from the hazards of unmonitored sales and protecting firms from exposure to loss and litigation." Department of Enforcement v. Fergus, No. C8A990025 (NAC, May 17, 2001), slip op. at p. 9. In this case, fifteen customers invested over $200,000 in purchasing securities which Hanson's firm might have ruled out, had he furnished the requisite notice. Meanwhile, he was enriched by some $22,050 in commissions.

Hanson's belief that the units were not securities rested on opinions from persons associated with the issuer, including its counsel (Tr. 21, 23, 27-31). Such reliance does not constitute a mitigating circumstance (Fergus, slip op. at pp. 19-23). Nor can the Panel consider his thirty-year lack of

disciplinary history as mitigating (Id. at pp. 24-25). Customer sophistication also does not mitigate the present misconduct (Id. at p. 25).

There are nevertheless reasons why appropriate sanctions in this case, though serious, can properly be less than a bar or a two-year suspension. The Sanction Guidelines list five "principal considerations" as bearing on the seriousness of selling away (Guidelines, at p. 19), but Hanson fits only one - failure to give his firm at least verbal notice. As to the others, the prosecutor stated that he did not contend that Hanson had a proprietary or beneficial interest in the securities, or that he tried to convey the impression that the member firm was behind the sales (Tr. 12). Respondent testified, without contradiction, that there had been no prior warning from the firm and that none of the customers was from his firm (Tr. 12-14, 29).

Hanson acknowledged his error and testified that he would have gone through the firm had he known that the units were securities (Tr. 10). He candidly described his misconduct and showed some remorse, stating:

> But I wish I would have done a better job ... I should have investigated a lot further now with hindsight, but it was foresight and I didn't. And I had never done this before. This is the first time, and I walked on thin ice and crashed through. And I admit wrongdoing. I didn't do it to hurt anybody, but I did it with the extreme thought that it would be beneficial to all of us (Tr. 31-32).

Considering all of the circumstances, the Panel does not find this case to be egregious and therefore declines to impose a bar or a two-year suspension.[5] But, as noted, serious sanctions are

[5] Hanson's sales involved fifteen customers who invested $220,500. In Fergus, supra, a respondent with far greater sales ($1.7 million to twenty customers) was suspended for 180 days; another, with sales of $898,000 to five customers, was suspended for 90 days.

nevertheless appropriate. The Panel concludes that Hanson should be suspended for 90 days ("a significant suspension" for selling away);[6] that he should be fined $5,000; and that he should disgorge the total commissions and pay that money to the customers on a pro rata basis. See District Bus. Conduct Comm. v. Stephen S. Knepp, 1995 NASD Discip. LEXIS 31, at *31, *33 (NBCC, June 9, 1995) (disgorgement of commissions to customers for selling away).[7] Ordering that Hanson disgorge his "selling away" commissions, coupled with the fine and suspension, signals that such misconduct does not pay and thus deters others from similar violations.

III. Conclusion

Respondent is suspended for 90 days and fined $5,000. He is further ordered to disgorge the sum of $22,050 and pay it pro rata to the fifteen customers listed on CX-1, attached as an Addendum to this Decision. Finally, Respondent is directed to pay a total of $1,122.91 in costs, reflecting $372.91 for the hearing transcript and the standard $750 administrative fee.

These sanctions shall become effective on a date set by the Association, but not earlier than 30 days after this Decision becomes the final disciplinary action of the Association, except that if this Decision becomes the final disciplinary action of the Association, Respondent's suspension shall

[6] Fergus, slip op. at p. 29.

[7] The exhibit erroneously recites that a total of 47 units were sold. The total should be 42, and the pro rata distribution should thus result in a payment of $525 per unit. Pro rata shares of Hanson's total $22,050 would not make the customers whole. Despite the shortfall, the case is inappropriate for restitution. Enforcement does not seek that remedy, and the record fails to reflect the precise amount of each loss.

become effective with the opening of business on September 17, 2001 and end at the close of business on December 16, 2001.[8]

HEARING PANEL

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Jerome Nelson
Hearing Officer

Dated: Washington, D.C.
July 19, 2001

Copies to: Roger A. Hanson (via overnight and first class mail)
Dale A. Glanzman, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

[8] We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.